

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. With this amendment, claims 1, 7, 23, 47-50 and 52 have been amended, claim 31 has been cancelled without prejudice or disclaimer of the subject matter recited in this claim, and no claims have been added. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier. Thus, claims 1-30, 32-50 and 52 remain pending in the application, with claims 12 and 36 withdrawn.

Support for the amendments to Claims 1, 7, 23, 47, 48, 50 and 52 can be found in the disclosure in at least page 8, lines 25-28. No new matter has been added.

Claim objection

The outstanding Official Action has objected to claim 7 alleging that it recites an improper comma in line 7. Applicant thanks the Examiner for the identification of an improper comma. Applicant has herein amended claim 7 to remove the improper command and respectfully request the withdrawal of objection to claim 7.

Claim Rejections Under 35 U.S.C. § 101

The outstanding Official Action has rejected claims 49 and 52 under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. Applicant respectfully traverses this rejection.

Claims 49 and 52 have been amended to recite, inter alia, a “non-transitory computer readable medium” and a “non-transitory computer readable medium,” respectively. Applicant submits that amended claims 49 and 52 are consistent with the USPTO’s guidelines on Subject Matter Eligibility of Computer Readable Media (1351 OG 212) and are directed to statutory subject matter. Applicant respectfully requests withdrawal of the rejection.

Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

The outstanding Official Action has rejected claim 31 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claim 31 has been canceled. Therefore, this rejection is moot.

Claims Rejections Under 35 U.S.C. § 102

The outstanding Official Action has rejected claims 1-11, 13-35, 37-50, and 52 under 35 U.S.C. § 102 as allegedly being anticipated by French et al. (U.S. Patent Publication No. 2003/0077556, hereinafter French). Applicant respectfully traverse the rejection.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Claim 1 has been amended to recite, *inter alia*, “certifying that the online use of the input device by the user meets the minimum requirements to satisfy a welding code.” Claims 23, 47, 48, 50 and 52 have been amended similarly. This feature is not taught by French et al.

“Certification” in Preamble

In making the rejection, the Examiner notes that the limitation “certification” is in the preamble of original claims 1, 23, 47, 48, 50 and 52. (Office action, page 8, lines 14-15). The Examiner, then asserts that “the intended use as stated in the preamble of instant claims 1, 47, 48, 50, and 52 means the devices only need to be “capable” of such a use.” (*Id.*). The Examiner further argues “If the latter limitation is selected (i.e. training scenarios complying...), then the certification limitation is interpreted to not be a required limitation (i.e. it was in the other data group that wasn't selected).” (*Id.* at lines 19-21).

Claims 1, 23, 47, 48, 50 and 52 have been amended to include “certifying” in the bodies of these claims. Thus, “certifying” is not a mere intended use; it is a limitation which must be expressly or inherently described in the reference. Further, claims 1, 23, 47, 48, 50 and 52 have

been amended to recite that certifying “meets the minimum requirements to satisfy a welding code.” French teaches an education system to assist in the training of hockey players. The system of French is has nothing to do with welding. Thus, for at least this reason, French does not anticipate amended claims 1, 23, 47, 48, 50 and 52, or any of the claims that depend from amended claims 1, 23, 47, 48, 50 and 52.

Broadest Reasonable Interpretation

During examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification. See *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995); *In re Etter*, 756 F.2d 852, 858, 225 USPQ 1, 5 (Fed. Cir. 1985) (en banc). “However, this court has consistently taken the tack that claims yet unpatented are to be given the broadest reasonable interpretation **consistent with the specification...**” *In re Prater*, 415 F.2d 1393, 1396 (CCPA 1969)(emphasis added).

In making the rejection, the Examiner states,

French et al. disclose testing and training protocols to allow the assessment and quantification of movement and agility skills (0071) as well as information representing valid and unique criteria to progress the player in his training program with immediate, objective feedback during training for motivation and optimized training and validation (0091, 0136, 0160, 0359-0360) and computer software (0048) which represents "certification" and "computer executable instructions for determining certification based on the training scenarios" in a broad and reasonable interpretation (see attached sheets of Merriam-Webster online definitions of "certify" and "certification"). (Office action, page 9, lines 4-10).

However, claims 1, 23, 47, 48, 50 and 52 have been amended to recite that certifying “meets minimum requirements to satisfy a welding code.” French teaches an education system to assist in the training of hockey players. While the system of French may be used to optimize training of hockey players, the system of French does not include codes or industry standards for which players can be certified. Indeed, no such codes exist for Hockey. There is simply no reasonable interpretation of “certify” or “certification” as clarified in amended claims 1, 23, 47, 48, 50 and 52 that would reasonably allow French to read on amended claims 1, 23, 47, 48, 50 and 52

Thus, for this reason also, French does not anticipate amended claims 1, 23, 47, 48, 50 and 52, or any of the claims that depend from amended claims 1, 23, 47, 48, 50 and 52. Applicant respectfully requests withdrawal of the rejection.

Conclusion

Applicants believe that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 18-1579. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 18-1579. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 18-1579.

Respectfully submitted,

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